

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BANCO COOPERATIVO DE PR

Plaintiff,

v.

ELIAS GROUP, LLC

Defendant.

CIVIL NO.: 1:17-CV-6697

Re: BREACH OF CONTRACT;
COLLECTION OF MONIES

COMPLAINT

TO THE HONORABLE COURT:

Plaintiff, Banco Cooperativo de Puerto Rico (“BanCoop”), through counsel states and complains as follows:

NATURE OF THE ACTION

This is a diversity action involving a breach of contract under the laws of the State of New York for defendant’s failure to satisfy a promissory note that became owing, due, and payable as of May 21, 2017.

PARTIES

1. Plaintiff, BanCoop, is a corporation organized and existing under the laws of the Commonwealth of Puerto Rico. It is registered with the Puerto Rico Department of State, bearing registration number 20. Its principal place of business is located at 623 Ponce de León Avenue in Hato Rey, Puerto Rico.

2. Defendant, Elias Group, LLC (“Elias Group”), is an entity organized and existing under the laws of the State of Delaware. It is registered with the Delaware Department of State, bearing file number 5280019. Its principal place of business is located at 1801 Boone Avenue in the borough of the Bronx in New York.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over the action pursuant to 28 U.S.C. §1332 because the amount in controversy exceeds Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interest, costs and attorneys' fees, and is an action between citizens of different states.

4. This Court has personal jurisdiction over the defendant because the principal place of business and/or nerve center of the corporate defendant is located in this district.

5. Venue lies in this district because the defendant's principal place of business and/or nerve center is located in the borough of the Bronx in New York, which is located within this district.

FACTS COMMON TO ALL CLAIMS

6. On May 21, 2015, BanCoop was assigned a Promissory Note (the "Note") issued by Elias Group on May 21, 2015, in favor of CCR Development Group, Inc. ("CCRDG") in the principal amount of ONE MILLION DOLLARS (\$1,000,000.00), bearing interest at five percent (5%) per annum, due and payable on May 21, 2017. A true and correct copy of the Note is attached hereto as **Exhibit 1**.

7. The Note was duly assigned to BanCoop with the Elias Group's knowledge and consent pursuant to: (i) Paragraph 4 of the Note; (ii) the terms of the Asset Purchase Agreement (the "Purchase Agreement") entered into between CCRDG and Elias Group on April 15, 2015; and (iii) the Assignment of Note Agreement dated as of May 21, 2015

between CCRDG and BanCoop. A true and correct copy of the Purchase Agreement is attached hereto as **Exhibit 2**.

8. Approximately one month prior to the Note becoming due, namely on April 24, 2017, BanCoop made a friendly reminder to Elias Group of anticipation of payment under the Note. A true and correct copy of the letter is attached hereto as **Exhibit 3**.

9. However, on May 18, 2017, Elias Group, in response to BanCoop's letter of April 24, 2017, advised, through its legal counsel, that Elias Group filed a lawsuit against CCRDG, Civil No. 16-6280-RWS (the "Complaint"), claiming the amount due under the Note as an "offset" inasmuch as it is Elias Group's position that the damages arising out of the claims asserted against CCRDG in the Complaint exceed that amount. The letter also indicated that as a result of the *Complaint* filed against CCRDG, Elias Group would "not be providing payment to BanCoop at this time", but it would "revisit its position depending on the result of the litigation between it and CCRDG." A true and correct copy of Elias Group's letter of May 18, 2017 is attached hereto as **Exhibit 4**.

10. BanCoop responded on June 13, 2017 to Elias Group's letter stating that its justification lacked any merit and further reiterated its demand of full payment of the Note on or before the close of business on Monday, June 19, 2017. A true and correct copy of the letter is attached hereto as **Exhibit 5**.

11. To date, Elias Group has failed to make full payment to BanCoop in violation of the clear and unequivocal terms of the Note.

THE CLAIMS FOR RELIEF

A. Count No. 1: Breach of Contract: The Promissory Note

12. Pursuant to Fed.R.CivP. 10(c), Plaintiff adopts and incorporates by reference the preceding factual allegations *in extenso* as though fully set forth herein.

13. The Note was duly assigned to BanCoop with the Elias Group's knowledge and consent pursuant to: (i) Paragraph 4 of the Note; (ii) the terms of the Asset Purchase Agreement (the "Purchase Agreement") entered into between CCRDG and Elias Group on April 15, 2015; and (iii) the Assignment of the Note Agreement dated as of May 21, 2015 between CCRDG and BanCoop.

14. Elias Group has breached the express terms of the Note by failing to make the necessary payments thereunder and, despite demand, has failed to cure its breach.

15. As a direct and proximate result of Elias Group's breach of the Note Agreement, BanCoop has been damaged.

16. Under the Note, Elias Group currently owes BanCoop \$1,000,000.00, plus accrued interest.

17. This amount is due, owing and payable, plus interest at legal rate in relation thereto.

WHEREFORE, BanCoop demands entry of a judgment against Elias Group for an amount within the jurisdictional limits of this Court, including an award of interest, costs, and attorneys' fees.

B. Count No. 2: Conversion

18. Pursuant to Fed.R.CivP. 10(c), Plaintiff adopts and incorporates by reference the preceding factual allegations *in extenso* as though fully set forth herein.

19. Elias Group has kept BanCoop's money after BanCoop requested its return despite Elias Group's lack of any ownership interest in the money.

20. By refusing to return to BanCoop its money, Elias Group intended to interfere with, and indeed has interfered with, BanCoop's ownership and interest in the money, thereby depriving BanCoop of its property, permanently or temporarily.

21. As a result of Elias Group's conversion of BanCoop's money, BanCoop has suffered damages.

WHEREFORE, BanCoop, demand and entry of judgment against Elias Group for an amount within the jurisdictions limits of this Court, including an award of interest, attorneys' fees, and costs.

CONTRACTUAL DAMAGES

22. Pursuant to Fed.R.Civ.P. 10(c), the allegations contained in the preceding paragraphs are adopted and incorporated *in extenso* herein by reference.

23. Elias Group failure to pay BanCoop for the proper performance of the Note has caused substantial damages to Plaintiff.

WHEREFORE, BanCoop requests that this Honorable Court enter judgment in favor of BanCoop and grant the damages requested, and a reasonable sum for interest, attorney's fees, expert witness fees, costs, and expenses as the prevailing party and any other relief that is appropriate under the law and equity.

RESERVATION OF RIGHTS

BanCoop reserves its right to further amend this Complaint, upon completion of its investigation and discovery, to assert any additional claims for relief against Elias Group or other parties as may be warranted under the circumstances and as allowed by law.

RESPECTFULLY SUBMITTED.

In New York, New York on this 1st day of September, 2017.



Andrew M. Friedman, Esq. (AF-7122)
Friedman Sanchez, LLP
Attorneys for Plaintiffs
16 Court St., Suite 2600
Brooklyn, New York 11241
T: (718) 797-2488
F: (718) 797-4304